

# Notice of Allowability

Application No.

09/899,369

Examiner

Jason M. Borlinghaus

Applicant(s)

VALLIANI ET AL.

Art Unit

3693

## -- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 7/30/07.
2. ☒ The allowed claim(s) is/are 1 - 5, 12 - 14, 16 - 17 and 19 - 30.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
  - a) ☐ All    b) ☐ Some\*    c) ☐ None    of the:
  1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

\* Certified copies not received: \_\_\_\_\_.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.  
**THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.**

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
5. ☐ CORRECTED DRAWINGS ( as "replacement sheets") must be submitted.
  - (a) ☐ including changes required by the Notice of Draftsperson's Patent Drawing Review ( PTO-948) attached
    - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date \_\_\_\_\_.
  - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date \_\_\_\_\_.Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

### Attachment(s)

1. ☒ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),  
Paper No./Mail Date \_\_\_\_\_
4. ☐ Examiner's Comment Regarding Requirement for Deposit  
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),  
Paper No./Mail Date \_\_\_\_\_
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other \_\_\_\_\_

## **DETAILED ACTION**

### ***Allowable Subject Matter***

**Claims 1 – 5, 12 – 14, 16 – 17 and 19 – 30** are allowed.

The following is a statement of reasons for indication of allowable subject matter.

The prior art fails to teach or suggest, the limitations of:

- “based on the first product being a cross-marketed product, calculating and recording an amount of cross-marketing revenue realized from a predetermined portion of the cost of the straight sale to a marketing fund in the database; and based on providing of the discount, allocating at least a portion of the cross-marketing revenue...to reimburse the second company...” (as in Claim 1).
- “based on a providing of the discount of the discount to the consumer, depositing a predetermined amount of money into a marketing fund account maintained at the server for the benefit of the second company in at least partial compensation for providing the discount.” (as in Claims 13 and 16).
- “recording an amount of cross-marketing revenue realized from the straight sale to a marketing fund account, wherein the marketing fund account is structured to defray the second company's costs in dispensing products in conjunction with a first promotional discount value earned by the purchase of the first company's products, and the first company's costs in dispensing products in conjunction with a second promotional discount value earned by the purchase of the second company's products.” (as in Claim 17).

Such limitation is present in all independent claims.

It is old and well known in the art to cross-market products and/or services, such as offering a promotional discount for a second product conditioned upon the purchase of a first product. Prior art references have numerous names for such marketing arrangements – upsales, cross-promotions, product bundling, marketing alliances and co-marketing.

However, while the general concept and practice of cross-marketing is old and well known, the prior art fails to disclose nor suggest the financial underpinnings of this marketing arrangement as articulated in the present application.

The majority of the prior art references are directed not towards a direct compensation of each company based upon the separate revenue generated by the companion product sold as part of the co-marketing mix, but rather towards achieving greater marketing efficiencies or higher marketing visibility through the co-marketing. While achieving greater marketing efficiencies ultimately translates into greater financial rewards for the companies involved through higher sales or lower marketing costs, direct division of the financial revenue generated by the product mix is rarely discussed.

Therefore, the instant application distinguishes from these common practices by utilizing an amount of revenue generated by the straight sale of a first product to defray the cost of a promotional offer concerning a second product.

Walker (US Patent 6,694,300) discloses a method/system for cross-marketing products between a first company (merchant) selling a first product and a second company (sponsoring merchant) selling a second product (supplementary product) in

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which based upon a first product being a cross-marketed product (product identifier that satisfies an upsell condition) providing a discount for a second product. (see col. 5, line 13 – col. 6, line 10). Neither this patent, alone nor in combination with others, discloses nor suggests the feature of utilizing an amount of revenue generated by the straight sale of a first product to defray the cost of a promotional offer concerning a second product.

Debelak (Debelak, Don. *Marketing Plan: Develop a Comprehensive Sales and Marketing Plan for Your Business, Service, or Product*. Adams Streetwise. 2000. p. 138) discloses a method for cross-marketing between a first company selling a first product/service (new carpeting) and a second company selling a second product/service (maid service) in which based upon a first product being a cross-marketed product/service (part of a cross-promotion) providing a discount (free coupons) for the second product/service. Neither this non-patent literature, alone nor in combination with others, discloses nor suggests the feature of utilizing an amount of revenue generated by the straight sale of a first product to defray the cost of a promotional offer concerning a second product.

### ***Conclusion***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jason M. Borlinghaus whose telephone number is (571) 272-6924. The examiner can normally be reached on 8:30am-5:00pm M-F.


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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, James Kramer can be reached on (571) 272-6783. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

Jason Borlinghaus (JMB)

September 15, 2007

 9-17-07  
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SUPERVISORY PATENT EXAMINER  
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